

Office of the Secretary of Labor

§ 24.102

Business days means days other than Saturdays, Sundays, and Federal holidays.

Complainant means the employee who filed a complaint under any of the statutes listed in § 24.100(a) or on whose behalf a complaint was filed.

OSHA means the Occupational Safety and Health Administration of the United States Department of Labor.

Respondent means the employer named in the complaint, who is alleged to have violated any of the statutes listed in § 24.100(a).

Secretary means the Secretary of Labor or persons to whom authority under any of the statutes listed in § 24.100(a) has been delegated.

§ 24.102 Obligations and prohibited acts.

(a) No employer subject to the provisions of any of the statutes listed in § 24.100(a), or to the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2011 *et seq.*, may discharge or otherwise retaliate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in any of the activities specified in this section.

(b) It is a violation for any employer to intimidate, threaten, restrain, coerce, blacklist, discharge, discipline, or in any other manner retaliate against any employee because the employee has:

(1) Commenced or caused to be commenced, or is about to commence or cause to be commenced, a proceeding under one of the statutes listed in § 24.100(a) or a proceeding for the administration or enforcement of any requirement imposed under such statute;

(2) Testified or is about to testify in any such proceeding; or

(3) Assisted or participated, or is about to assist or participate, in any manner in such a proceeding or in any other action to carry out the purposes of such statute.

(c) Under the Energy Reorganization Act, and by interpretation of the Secretary under any of the other statutes listed in § 24.100(a), it is a violation for any employer to intimidate, threaten, restrain, coerce, blacklist, discharge,

or in any other manner retaliate against any employee because the employee has:

(1) Notified the employer of an alleged violation of such statute or the AEA of 1954;

(2) Refused to engage in any practice made unlawful by such statute or the AEA of 1954, if the employee has identified the alleged illegality to the employer; or

(3) Testified or is about to testify before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of such statute or the AEA of 1954.

(d)(1) Every employer subject to the Energy Reorganization Act of 1974, as amended, shall prominently post and keep posted in any place of employment to which the whistleblower provisions of the Act apply, a fully legible copy of the notice prepared by OSHA, printed as appendix A to this part, or a notice approved by the Assistant Secretary that contains substantially the same provisions and explains the whistleblower provisions of the Act and the regulations in this part. Copies of the notice prepared by OSHA may be obtained from the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210, from local OSHA offices, or from OSHA's Web site at <http://www.osha.gov>.

(2) Where the notice required by paragraph (d)(1) of this section has not been posted, the requirement in § 24.103(d)(2) that a complaint be filed with the Assistant Secretary within 180 days of an alleged violation will be inoperative, unless the respondent establishes that the complainant had knowledge of the material provisions of the notice. If it is established that the notice was posted at the employee's place of employment after the alleged retaliatory action occurred or that the complainant later obtained knowledge of the provisions of the notice, the 180 days will ordinarily run from whichever of those dates is relevant.

(e) This part shall have no application to any employee who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement

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of any of the statutes listed in § 24.100(a) or the AEA of 1954.

§ 24.103 Filing of retaliation complaint.

(a) *Who may file.* An employee who believes that he or she has been retaliated against by an employer in violation of any of the statutes listed in § 24.100(a) may file, or have filed by any person on the employee's behalf, a complaint alleging such retaliation.

(b) *Nature of Filing.* No particular form of complaint is required. A complaint may be filed orally or in writing. Oral complaints will be reduced to writing by OSHA. If a complainant is not able to file the complaint in English, the complaint may be filed in any language.

(c) *Place of Filing.* The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: <http://www.osha.gov>.

(d) *Time for Filing.* (1) Except as provided in paragraph (d)(2) of this section, within 30 days after an alleged violation of any of the statutes listed in § 24.100(a) occurs (*i.e.*, when the retaliatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been retaliated against in violation of any of the statutes listed in § 24.100(a) may file, or have filed by any person on the employee's behalf, a complaint alleging such retaliation. The date of the postmark, facsimile transmittal, e-mail communication, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office will be considered the date of filing. The time for filing a complaint may be tolled for reasons warranted by applicable case law.

(2) Under the Energy Reorganization Act, within 180 days after an alleged violation of the Act occurs (*i.e.*, when the retaliatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been retaliated

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against in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such retaliation. The date of the postmark, facsimile transmittal, e-mail communication, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office will be considered the date of filing. The time for filing a complaint may be tolled for reasons warranted by applicable case law.

(e) *Relationship to Section 11(c) complaints.* A complaint filed under any of the statutes listed in § 24.100(a) alleging facts that would also constitute a violation of Section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. 660(c), will be deemed to be a complaint under both Section 11(c) and the applicable statutes listed in § 24.100(a). Similarly, a complaint filed under Section 11(c) that alleges facts that would also constitute a violation of any of the statutes listed in § 24.100(a) will be deemed to be a complaint under both section 11(c) and the applicable statutes listed in § 24.100(a). Normal procedures and timeliness requirements under the respective statutes and regulations will be followed.

§ 24.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the respondent of the filing of the complaint by providing the respondent (or the respondent's legal counsel if respondent is represented by counsel) with a copy of the complaint, redacted, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, *et seq.*, and other applicable confidentiality laws. The Assistant Secretary will provide a copy of the unredacted complaint to the complainant (or complainant's legal counsel, if complainant is represented) and to the appropriate office of the Federal agency charged with the administration of the general provisions of the statute(s) under which the complaint is filed.

(b) Within 20 days of receipt of the notice of the filing of the complaint provided under paragraph (a) of this section, the respondent may submit to the Assistant Secretary a written